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IN THE

# Supreme Court of the United States

**October Term, 1956**

## No. 498

TALLINNA LAEVAEHISUS (TALLINN SHIPPING COMPANY), JOSEP FERDINAND MAIPALU, by A. NURMISTE, Mandatory, ISAAK KAIN, Liquidator and Administrator of the Estates of JOHANNES LINKRUUS, THEODOR LIIMAN, ISAAK KAIN, JULIUS TRUUBERK and JOHANNES INKAPOOL,

*Petitioners,*

vs.

THE UNITED STATES,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

*To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

The petition of Tallinna Laevaehisus (Tallinn Shipping Company), Josef Ferdinand Maipalu, by A. Nurmiste, Mandatory, Isaak Kain, Liquidator and Administrator of the Estate of Johannes Linkruus, Theodor Liiman, Isaak Kain, Julius Truuberk and Johannes Inkapool respectfully prays that a writ of certiorari issue to the United States Court of Claims in the above entitled action and respectfully shows:

(a) The Opinion and Findings of the Court below are not reported in official or unofficial reports.

(b) The grounds on which the jurisdiction of the United States Supreme Court is invoked are:

A. The United States Court of Claims decided an important question of federal law which has not been but should be decided by this court.

B. Part of the decision of the Court of Claims is in direct conflict with applicable decisions of this court.

(b)(i) The date of the judgment or decree sought to be reviewed is April 3, 1956.

(b)(ii) A motion for rehearing in the Court of Claims was denied on July 12, 1956.

(b)(iii) Statutory provisions believed to confer on this court jurisdiction to review the judgment is U. S. C. A. Title 28, Section 1255.

(c) The questions presented for review are:

A. The court found the valuation of the MARET to be $150,000 based on an average value of $176,000 after deducting $175,000 for repairs from average valuation of petitioners' witnesses and a value of $90,000 after deducting $175,000 for repairs from average of respondent's witnesses.

The court made a miscalculation and arrived at a value less than the finding supports and is as follows: The respondent's witness Pierot valued the MARET as compared with the HAIFA TRADER at $371,000 (Finding 65), whereas using sales of British ships subject to British restrictions, he testified that the value of the MARET was only $180,000 (Finding 64) which was used by the court.

B. The court refused to add to the value of the steamship MARET an additional sum for delay in payment. This was a violation of the requisition statutes and a violation of the Treaty between the United States and Estonia.

(d) The constitutional provisions, treaties and statutes which the case involves are:

U. S. C. A. Title 28, Section 1255 (see Appendix B, annexed);
Act of June 6, 1941, C. 174, 55 Stat. 242 (see Appendix C, annexed);
U. S. C. A. Title 50, section 1271;
Merchant Marine Act of 1936, 902, U. S. C. A. Title 46, Section 1242 (see Appendix D, annexed);
Fifth Amendment to the United States Constitution (see Appendix D-1, annexed);
Treaty between the United States and Estonia, proclaimed May 25, 1926, Article I (see Appendix F, annexed).

Relevant sections of the foregoing are printed in the Appendix.

(c) This litigation was brought to recover just compensation for the requisition of the Estonian Steamship MARET. The ship was requisitioned September 16, 1941, pursuant to Public Law 101, 77th Congress approved June 6, 1941. At the time of the requisition, there was pending and undetermined a possessory libel by the representative of the petitioners herein for possession of the MARET in the United States District Court for the District of the Virgin Islands. The original plaintiff (Estonian Cargo and Passenger Steamship Line) herein intervened and claimed the right to possession. Upon requisition, the question of possession became moot and the proceedings were discontinued. Subsequently, August 22, 1947, the original plaintiff herein filed suit in the United States Court of Claims for just compensation basing its alleged right to compensation on several "nationalization" decrees of the U.S.S.R. and the government of the Estonian Soviet Socialist Republic established in Estonia after the invasion of that country by the Russians in June, 1940. The absorption of Estonia and the decrees of the new regime are not recognized by the United States. On or about the 4th day of March, 1948, the pre-invasion Estonian owners of the steamship MARET were allowed to intervene in the suit and claimed that they

were entitled to compensation on the ground that they were the real owners.

The original complaint was dismissed on motion of petitioners herein on December 1, 1953, and ownership of the MARET determined. The suit was continued as between intervenors and the United States and resulted in a net award to intervenors of $86,865.21. This award was based on an erroneous application of an appraisal of one of the defendant's witnesses and did not include any sum for delay in payment (Finding 90).

## Argument

(h) The difference in the two valuations of the Maret by the respondent's witness Pierot arose from the fact that the lower value was based on the sale of ships in the restricted British market, and the higher value was based on the sale of a ship free from British or American restrictions. The Court used the valuation subject to restrictions on sale of ships. But when the respondent's witness Sturm testified to the then current depreciation rate in a cost reproduction method of valuation, he used sales of American ships subject to American restrictions in arriving at his percentage of 4.77%. In respect to the use of sale of restricted ships, the Court said:

> "His (Sturm) formula in the circumstances surrounding the Maret was unrealistic"

and used 2½% as the proper depreciation. The same stricture applies to Pierot's use of British restrictions on the sale of British ships. Therefore, the valuation of the Maret at $371,000 should have been used. Applying this higher valuation to the Maret, the average valuation of respondent's witnesses is $154,317 instead of $90,000 as used by the Court (Finding 89) which would make a difference between the average of petitioner's witnesses and respondent's wit-

nesses of $21,683. If this difference of $21,863 were evenly split between the parties, $10,847 would be added to the valuation of $150,000, making the valuation $160,847.

It is contended that this Court should correct such a patent error particularly when the lower Court had its attention directed thereto in the application for re-argument and refused the opportunity to correct this error.

## Additional Sum for Delay in Payment

There is a long line of cases in the Supreme Court holding that just compensation consists of the value of the property when taken, plus such sum as would compensate the owner for delay in receiving payment for his requisitioned property. Among the earlier cases are:

*Brooks Scanlon Corp.* v. *U. S.*, 265 U. S. 106;
*Seaboard Air Line* v. *U. S.*, 261 U. S. 299;
*United States* v. *Rogers*, 255 U. S. 163;
*Phelps* v. *U. S.*, 274 U. S. 341.

In the case of the requistion of foreign owned ships, the Merchant Marine Act of 1936 provides that just compensation *shall be determined and paid by the Commission as soon as practicable*, and the Act of June 6, 1941, provides that *compensation under that act shall be deposited with the Treasury of the United States* and the funds so deposited shall be available for the payment of such compensation.

Just compensation was never determined. Consequently, no payment was made to the Treasury as required by the Act. The Act points out the whole duty of the Maritime Commission in relation to the requisition of foreign ships. That duty was to determine just compensation as soon as practicable and pay that amount into the Treasury. There was solid reason for the requirement of payment to the Treasury because most of the ships belonged to nationals

whose countries were under duress by one or the other of the warring nations and thus made it difficult, if not impossible, to ascertain the owners at the time of requisition and the Commission was under no obligation to ascertain the owners as payment was not to be made to the owners but to the United States Treasury. Because of wartime laws and restrictions such as Trading With The Enemy Act and Freezing Orders, payment to owners could not have been made.

In all cases involving requisition of American ships, interest began to run from the date of requistion to date of determining compensation by the Commission on the amount of compensation as afterward determined, and on the difference between the amount as awarded by the Commission and by the Court. The denial of a sum for delay in payment treats Estonian nationals in a disadvantageous position in regard to just compensation for their property requisitioned by the respondent than it accords its own nationals in contravention of the Treaty between the United States and Estonia. In the case of the MARET, interest began to accrue on the date of requisition September 16, 1941, as in all other cases, and in the opinion of the Court of Claims continued running, for that Court on May 5, 1948, denied defendant's motion to temporarily toll the running of interest. However, on November 29, 1949, the Court reconsidered this order and granted the motion "until such time as the rightful ownership has been determined by this Court" (See Appendix F). Ownership was determined on December 1, 1953, and by the terms of this order, interest began running again on December 1, 1953, and at the very least, petitioners are entitled to interest from that date.

In view of the decisions of the Supreme Court requiring the payment of a sum for delay in payment and the neglect of the defendant to comply with the statutes by not making its own determination of just compensation and paying that amount into the Treasury of the United States,

the Court below plainly erred in denying such sum to the petitioners, particularly when its error was pointed out in the motion for reargument. Counsel has found no decision of the Supreme Court on the tolling of interest when the defendant has not complied with the requirements of the statutes in question. This point should be authoritatively decided by the Supreme Court.

Interest at the rate of 4% on the amount of the award in the Court below since the requisition of the MARET amounts to about $50,000.

Not only as a Treaty right but as a matter of fair and equal justice under the United States laws, foreign nationals should receive the same treatment as our citizens. A scrupulous adherence to this principle would insure the respect of foreign nationals for our government and assure them that their faith in the United States is well founded.

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